



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
17 January 2013

Original: English

Committee against Torture

List of issues prior to the submission of the sixth periodic report of Bosnia and Herzegovina*,** adopted by the Committee at its forty-ninth session (29 October–23 November 2012)

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (para. 8),¹ please provide detailed information on the measures taken to harmonize the legal definition of torture in the State and entity laws and to incorporate into domestic law the crime of torture as defined in article 1 of the Convention.² Please indicate the measures adopted by the State party to ensure that such crimes are punished with appropriate sentences, which take into account their seriousness, in accordance with the provisions of the Convention. If this has not yet taken place, please explain the reasons why.

2. Regarding the Committee's previous concluding observations (para. 9), and the State party's follow-up replies thereto, please provide updated information on measures amending the Criminal Code to include a definition of sexual violence in accordance with international standards and jurisprudence relating to the prosecution of war crimes of sexual violence and removing the condition of "force or threat of immediate attack" from the present definition.

* Whatever reference is made to the State party, it should be understood as covering the State, entities, cantons and municipalities, as well as the Brcko District.

** The present list of issues was adopted according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/BIH/CO/2-5.

² See also CAT/C/BIH/CO/1, para. 9.

Article 2³

3. Regarding the Committee's previous concluding observations (para. 10), please provide information on the measures taken, and procedures in place, to ensure, in law and in practice that:

(a) All persons deprived of their liberty are guaranteed the right to be informed of the reasons for arrest, access to a lawyer of their choice and the right to inform a family member of their arrest within a short period of time following their apprehension;

(b) All detainees promptly undergo an independent medical examination;

(c) All detained persons are promptly brought before a judge.

4. Further to the Committee's previous concluding observations (para. 11), please provide information on the material, human and budgetary resources allocated for the effective functioning of the Human Rights Ombudsman, as well as any additional resources granted to that national human rights institution to conduct its mandate as the national preventive mechanism under the Optional Protocol to the Convention. Please discuss any steps taken to adopt a more consultative process for the selection and appointment of the Ombudsman (para. 11 (a)). Please provide information on the activities and achievements of the Ombudsman institution with respect to the prevention of torture and ill-treatment during the period under review. This information should include statistics on the number and types of complaints received by the Human Rights Ombudsman, as well as the outcome of any complaints of torture and ill-treatment.

5. Please provide information on the measures in place to fully ensure the independence of the judiciary in conformity with the Basic Principles on the Independence of the Judiciary. Please include information on the achievements made by the Justice Sector Reform Strategy.⁴

6. Please provide updated information, disaggregated by age and ethnicity of the victims, on the number of complaints investigations, prosecutions, convictions and sentences handed down in cases of gender-based violence since the consideration of the combined second to fifth periodic reports of Bosnia and Herzegovina in November 2010.

7. Please provide updated information, disaggregated by age, sex and ethnicity of the victims, on the number of complaints, investigations, prosecutions, convictions and sentences imposed on cases of human trafficking since the consideration of the State party's previous report (para. 23). Please also provide additional information on:

(a) Any new legislation or measure that has been adopted to prevent and combat trafficking in persons. In this regard, please evaluate the results of the third National Action Plan to Combat Trafficking in Human Beings and Illegal Immigration (2008-2012);

(b) The measures adopted to ensure that victims of human trafficking have access to effective remedies and reparation;

³ The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As stated in paragraph 3 of general comment No. 2 (2007) on the implementation of article 2 by States parties: "The obligation to prevent torture in article 2 is wide ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

⁴ European Commission, Commission staff working paper, Bosnia and Herzegovina 2011 progress report, document SEC(2011) 1206 final, p. 13.

(c) The signature of bilateral or subregional agreements with countries concerned, including neighbouring countries, to prevent and combat human trafficking.

Article 3

8. With reference to the Committee's previous concluding observations (para. 14), please provide information on the measures which have been taken to revise the national legislation on refugees and asylum seekers to fulfil all obligations under article 3 of the Convention.

9. Please provide information about the number of persons, disaggregated by country of origin, who have been granted asylum or humanitarian protection, and the number of those who have been returned, extradited or expelled since the consideration of the previous report. Please provide details of the grounds on which they were sent back, including a list of countries to which individuals were returned. Please provide updated information on the type of appeal mechanisms that may exist, on whether any appeals have been made and if so, their outcome.

10. Please indicate the number of cases of refoulement, extradition or expulsion carried out by the State party during the reporting period through the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the State party has offered such diplomatic assurances or guarantees. What are the minimum contents of any such assurances or guarantees, whether given or received, and what measures with regard to subsequent monitoring have been taken in such cases?

11. With reference to the previous concluding observations (para. 15), please indicate the measures taken, if any, by the State party to put an end to the practice of prolonged detention of individuals whose citizenship has been revoked by the State Commission for Revision of Decisions on the Naturalization of Foreign Nationals. Please provide information on the steps taken, and the procedures in place, to ensure that these individuals are guaranteed a fair and efficient asylum procedure.

Articles 5, 7 and 8

12. Please provide information on whether the State party has rejected, for any reason, requests for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. Please provide information on any new cases that have reached trial and with what result.

Article 10

13. With reference to the previous concluding observations (para. 22), please provide up-to-date information on educational programmes developed by the State party to ensure that all law-enforcement officials are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that any offenders will be prosecuted. Please indicate if the State party has developed a methodology to assess the effectiveness of training and educational programmes on the reduction of cases of torture and ill-treatment and, if so, please provide information on the methodology.

14. Please provide detailed information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?

Article 11

15. Please describe the procedures in place for ensuring compliance with article 11 of the Convention and provide information on any rules, instructions, methods and practices or arrangements for custody that may have been introduced since the consideration of the previous report in 2010. Please also indicate the frequency with which these are reviewed.

16. In the light of the previous concluding observations (paras. 19 and 20), please clarify what measures have been taken to bring the conditions of detention in places of deprivation of liberty into line with international and national law standards. Please comment on reports according to which the State party's prison system is fragmented and lacks a uniform legislative framework for implementing criminal sanctions. Please also outline the steps taken to establish an independent and effective complaint mechanism for persons deprived of their liberty (para. 21).

17. Please provide updated information, including statistics, disaggregated by sex, age and ethnicity or nationality on the number of pretrial detainees and convicted prisoners and the occupancy rate of all places of detention for the period under review. Please provide a complete list of immigration detention centres in the territory of the State party as well as statistics, disaggregated by sex, age and nationality, on the number of persons detained in such centres.⁵

18. Please provide disaggregated statistical data regarding deaths in custody during the period under consideration, broken down by place of detention, sex, age and ethnicity of the deceased and cause of death. Please give detailed information on the results of the investigations in the deaths and the measures taken to prevent suicides and other sudden deaths in detention centres.

19. Please provide information about the frequency of violence among prisoners, including any cases involving possible negligence on the part of law-enforcement personnel, and the number of complaints made in this regard. What preventive measures have been taken (para. 19 (b))?

20. Please also provide information on the number of persons deprived of their liberty in psychiatric hospitals and other institutions for persons with psychosocial disabilities. What is the situation with respect to alternative forms of treatment, such as community-based rehabilitation services and other forms of outpatient treatment programmes? Please provide information on the concrete measures taken by the State party to address the serious concerns regarding the situation of persons in psychiatric establishments and social care homes, as for instance reflected in the report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Bosnia and Herzegovina in April 2011⁶ and the 2010 Ombudsman's special report on the rights of persons with disabilities.

Articles 12 and 13

21. Please provide detailed data, disaggregated by sex, age, ethnicity and place of detention, on complaints of acts of torture and ill-treatment recorded during the period under consideration. Please include information on investigations, disciplinary and criminal proceedings, convictions and the penal or disciplinary sanctions applied.⁷ Please provide

⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), report on its visit to Bosnia and Herzegovina, 5–14 April 2011, document CPT/Inf (2012) 15, paras. 79-91; CAT/C/BIH/CO/2-5, para. 15.

⁶ CPT/Inf (2012) 15, paras. 92-127.

⁷ CAT/C/BIH/CO/2-5, para. 26; CCPR/C/BIH/Q/2, para. 14.

updated information on the existence and practice of independent and external oversight mechanisms for alleged unlawful acts committed by the police and other law-enforcement officials.⁸

22. With reference to the Committee's previous concluding observations (paras. 9, 12, 24 (e) and 26), and further to the State party's follow-up replies,⁹ please provide:

(a) Updated information on the investigations, prosecution and sanctioning of war crimes and past human rights violations committed during the 1992-1995 conflict, including extrajudicial killings, enforced disappearances, war-time rape and other crimes of sexual violence (para. 9);

(b) Updated information on the progress made in executing the National War Crimes Prosecution Strategy.¹⁰ Please clarify whether the State party has ensured that, when considering cases involving crimes committed during the conflict, the entity courts refer to the 2003 Criminal Code rather than the Criminal Code of the former Socialist Federal Republic of Yugoslavia.¹¹

(c) Information on measures taken aimed at ensuring the enforcement of Constitutional Court's judgements.¹² Please provide information on any cases in which the Prosecutor's Office has charged individuals or entities under article 239 of the Criminal Code for failure to enforce the Court's decisions, particularly in cases involving enforced disappearance. In its follow-up replies, the State party confirmed the need for a more precise mechanism of supervision and control over the execution of decisions of the Constitutional Court. Has the State party developed such a mechanism, and have civil society representatives been consulted in this process?

23. Referring to the Committee's recommendation in its previous concluding observations (para. 16), please provide information on the measures taken to ensure that all crimes and acts of violence against refugees and internally displaced persons are properly and promptly investigated and prosecuted.

24. With reference to the previous concluding observations (para. 17), please provide information on any measures taken to address the deficiencies in the witness protection and support services. How many cases of intimidation and threats against witnesses have been reported during the period under review?

Article 14

25. In the light of the Committee's previous concluding observations (para. 18), and further to the State party's follow-up replies,¹³ please provide updated information on the progress made in adopting the National Strategy for Transitional Justice.¹⁴ Please also indicate the status of the draft law on the rights of victims of torture and civilian victims of war.¹⁵ Regarding the State party's follow-up replies, please provide updated information on the State party's progress in planning and implementing the Programme for the Improvement of the Status of Women Victims of Rape, Sexual Violence and Torture in Bosnia and Herzegovina. Please describe the extent to which civil society organizations and

⁸ CPT/Inf (2012) 15, paras. 7-14.

⁹ CAT/C/BIH/CO/2-5/Add.1.

¹⁰ *Ibid.*; European Commission, working paper, p. 13.

¹¹ CAT/C/BIH/CO/2-5/Add.1.

¹² A/HRC/WG.6/7/BIH/3, para. 28; CAT/C/BIH/CO/2-5/Add.1.

¹³ CAT/C/BIH/CO/2-5/Add.1.

¹⁴ European Commission, working paper, p. 13.

¹⁵ CAT/C/BIH/CO/2-5/Add.1.

victims' representatives were involved in the process of development of these initiatives. Please clarify whether the right of compensation depends on the existence of a judgement in criminal proceedings ordering compensation. Please indicate how many victims have been compensated despite the perpetrator not being identified. Do investigations in such cases continue until the perpetrator(s) is/are identified and brought to justice? Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment if the perpetrator has been subject to disciplinary, but not penal sanctions?

26. Please provide information on redress and compensation measures, including the means of rehabilitation ordered by the courts and actually provided to victims of torture, or their families, since the examination of the combined second to fifth periodic reports of Bosnia and Herzegovina in November 2010. This information should include the number of requests made, the number granted, and the amounts ordered and those actually provided in each case.

27. Concerning the previous concluding observations (para. 24), please indicate any measures taken by the State party to ensure the independence of the Institute for Missing Persons, including the timely appointment of the members of its managing bodies. Please also indicate the material, human and budgetary resources allocated to this Institute. Has the Central Record of Missing Persons been completed and made available to the public? Has the Fund for Support to the Families of Missing Persons become operational and its financing secured?¹⁶ Please provide updated information on the measures taken to ensure, in practice, that the Prosecutor's Office regularly informs relatives of missing persons and their associations of the progress made in the processes of exhumation and identification of mortal remains. Please indicate if relatives of missing persons are provided with psychosocial support and access to assistance programmes during and after the process of exhumation and identification of mortal remains. If so, please provide data on the number of persons to have received such assistance, disaggregated by location.

Article 16

28. Please indicate the measures taken to ensure that corporal punishment of children is explicitly prohibited in all settings, including in the home, schools, alternative childcare and places of detention of juveniles. Please provide information about the penal sanctions in place for corporal punishment.¹⁷

29. Please clarify whether the State party has adopted a policy or guidelines on the use of restraint of inmates and violent or agitated patients, as for instance repeatedly recommended by CPT.¹⁸

30. Please comment on the reports that member of ethnic groups, religious and national minorities continue to be subject to acts or threats of physical violence, including intimidation and harassment. Please provide information on the measures taken to address such harassment.¹⁹

31. Please inform the Committee on measures taken to address concerns regarding the hostile environment for journalists and human rights defenders and activists, particularly those working on the rights of lesbian, gay, bisexual and transgender people.²⁰

¹⁶ Ibid.

¹⁷ CCPR/C/BIH/Q/2, para. 27.

¹⁸ CPT, report on its visit to Bosnia and Herzegovina, 11-15 May 2009, document CPT/Inf (2010) 10, para. 50; CPT/Inf (2012) 15, para. 103.

¹⁹ CCPR/C/BIH/Q/2, para. 8.

²⁰ Ibid., para. 21.

Other issues

32. Please provide updated information on the measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005).²¹ Please describe the relevant training available given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

33. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous report, including any relevant jurisprudential decisions.

34. Please provide detailed relevant information on the new political, administrative or other measures taken to promote and protect human rights at the national level since the previous report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

35. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous report in 2010, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.

²¹ Reports of Bosnia and Herzegovina to the Counter-Terrorism Committee: S/2001/1313; S/2002/1086; S/2003/912; S/2004/876; S/2006/215.